National Security

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I. Nuclear Nonproliferation

With more than ninety percent of the world's 20,000 nuclear weapons in the hands of the United States and Russia, international nuclear security greatly depends upon those nations' adherence to the disarmament provisions of the Nuclear Nonproliferation Treaty ("NPT").[1] The NPT sets forth the basic bargain struck by nuclear states to seek disarmament in exchange for non-nuclear states' forsaking the development of nuclear weapons and being ensured access to peaceful uses of nuclear technology, such as medical and energy-generating purposes. In the forty years since its entry into force in 1970, several NPT progeny treaties have reduced stockpiles, yet thousands of weapons remain deployed and on high levels of alert status, while proliferation, by three countries outside the treaty (India, Pakistan, and Israel), has occurred in some of the most threatening corners of the globe.

The year 2010 enjoyed some momentum in this arena. Following the positive atmosphere generated by a diminished role for nuclear weapons in the new U.S. Nuclear Posture Review,[2] a forward-looking communiqué from the April 2010 U.S.-hosted Nuclear Security Summit,[3] the safe and secure U.S. effort to remove 775 weapons-worth of nu-

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1. Treaty on the Non-Proliferation of Nuclear Weapons, art. 6, Mar. 5, 1970, 21 U.S.T. 483, 729 U.N.T.S. 161.

2. Robert M. Gates, *Nuclear Posture Review Report*, U.S. DEP'T OF DEFENSE, i-xvi (2010), http://www.defense.gov/npr/docs/2010%20Nuclear%20Posture%20Review%20Report.pdf.

3. *Nuclear Security Summit*, U.S. DEP'T OF STATE, http://www.state.gov/nuclearsummit/ (last visited Jan. 28, 2011).

clear material from a decrepit Soviet complex in Kazakhstan,[4] and a consensus-generating review of the NPT,[5] the U.S.-Russia New START agreement was ratified by a prolific lame-duck Congress just before the end of the year.

Both parties signed the New START agreement in April despite the United States' 2002 withdrawal from the Anti-Ballistic Missile Treaty, an action widely viewed as being inconsistent with maintaining the strategic balance needed to enable further cuts. By the time of the U.S. withdrawal, the bilateral Strategic Offensive Reduction Treaty ("SORT", also known as the "Moscow Treaty") was in place, fostering a two-thirds cut in strategic forces. But, SORT did not provide for the verifiable destruction of warheads and delivery systems. In effect, the agreement only changed the operational status of the weapons. New START provides for verification, monitoring, sharing of telemetry, transparency, and reductions to 1550 warheads each, deployed on specified numbers of platforms. Experts have heralded the treaty as the resumption of the decades-long effort to reduce the political currency of nuclear weapons in a post-Cold War world, in which the greatest threats are identified as being posed by terrorists and rogue states. By some, however, the agreement is an extension of antiquated Cold-War thinking. By any measure, however, New START will enable the resumption of significant verifiable reductions in strategic nuclear warheads, and open the door to future cuts in warheads and delivery systems.

The Obama Administration had hoped for quick passage of the treaty during the brief congressional session between elections and the new Congress. However, the treaty immediately became a political football, and the subject of a widely-criticized compromise by President Obama to provide billions in funding to upgrade the national nuclear laboratories for a new generation of nuclear weapons. The President paid this price to allay the opposition Republican Party leaders' concerns regarding the viability of these facilities and their capacity to maintain the remaining nuclear arsenal, among other works. Also added was a nonbinding statement confirming the administration's commitment to an antiballistic missile shield. While delay on ratification was threatened, with Senators such as Minority Whip John Kyl citing a "combination of other work Congress must do and the complex and unresolved issues related to START and modernization,"[6] several Republican senators sided with unanimous Democrats in ratifying it just before Christmas. This ratification prevented the treaty from perhaps lying fallow on the Senate floor under a new, more Republican-weighted, body.

Other initiatives concerning weapons of mass destruction languish in various states of inertia. Many of the goals set forth in the Thirteen Practical Steps for Nuclear Disarmament, agreed to a decade earlier at the 2000 NPT Review Conference, remain unrealized. These include entry into force of The Comprehensive Test Ban Treaty ("CTBT"), first presented to the Senate for ratification in 1996 and never resubmitted, and the Fissile

4. Press Release, Nat'l Nuclear Sec. Admin., NNSA Secures 775 Nuclear Weapons Worth of Weapons-Grade Nuclear Material from BN-350 Fast Reactor in Kazakhstan (Nov. 18, 2010), *available at* http://nnsa.energy.gov/mediaroom/pressreleases/bn35011.18.10.

5. 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document*, at 1-3 NPT/CONF.2010/50, Vol. I, Part I (May 28, 2010), *available at* http://www.reachingcriticalwill.org/legal/npt/revcon2010/FinalDocument.pdf; NPT one week after consensus adoption of agreed document, http://acronyminstitute.wordpress.com/2010/06/07/npt-one-week-after-consensus-adoption-of-agreed-document/ (June 7, 2010, 11:34 AM).

6. Press Release, U.S. Senator for Ari Jon Kyl, Kyl Statement on START (Nov. 16, 2010), *available at* http://kyl.senate.gov/record.cfm?id=328567.

Material Cutoff Treaty. These issues have been treated in previous annual reviews and are currently beyond the scope of this article.[7]

Meanwhile, Iran's nuclear program garnered much attention. Because Russia provided technical assistance to build and operate a nuclear reactor there, and Iran constructed further facilities closed off from treaty-mandated IAEA monitoring, the West has accused Iran of non-compliance with its obligations under the NPT to refrain from weapons production. Iran is accused of illegally importing and operating hundreds of centrifuges used in the refinement of fissile material toward the construction of nuclear weapons. Intelligence analysts present an increasingly looming date by which Iran can marry a weaponized nuclear warhead with a delivery system capable of striking Israel and Western Europe. As a result, the United Nations Security Council arrived at the consensus necessary to increase sanctions on Iran. On June 9, 2010, the U.N. Security Council passed Resolution 1929,[8] which includes a blacklist of Iranian entities. This sanctions resolution will remain in effect until Iran verifiably suspends its enrichment-related and reprocessing activities. The United States followed with a congressional measure,[9] including a provision for sanctions against any entity that provides Iran with refined petroleum resources. This legislation led to worldwide fuel supply interruptions to Iran's national airline. Parliamentary efforts in the European Union,[10] Australia,[11] and Canada[12] have had great impact on a variety of Iranian commercial interests, many of which are regarded as being controlled by the Iranian Revolutionary Guard. Meanwhile, Russia and China, hesitant from the outset on approving sanctions, have not applied these sanctions internally and are selling refined petroleum to Iran, which has large oil reserves but a low refining capacity. To its credit, Russia fulfilled its commitment to Resolution 1929 when it rejected the sale of a Volga River port to a blacklisted Iranian company.[13] Whether these initiatives have any impact upon a defiant regime remains to be seen, especially in light of Iran's persistent refusal of international demands to shut down their nuclear refining facility at Natanz, as well as the construction of a heavy water nuclear plant capable of producing plutonium in Arak. Talks with Iran resumed in Geneva, with a new round scheduled in January 2011.

II. State Secrets Doctrine

The state secrets doctrine has been recognized ever since the Supreme Court's 1876 decision in *Totten v. United States*[14] and became particularly well known after its applica-

7. *See* John R. Burroughs et al., *Arms Control and National Security*, 36 INT'L LAW. 471, 490 (2002).

8. S.C. Res. 1929, ¶¶ 10-11, annex I-III, U.N. Doc. S/RES/1929 (June 9, 2010).

9. Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Pub. L. No. 111-195, § 102, 124 Stat. 1312 (2010).

10. Council Decision 2010/413/CFSP, 2010 O.J. (L 195) (EU), *available at* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:195:0039:0073:EN:PDF.

11. *United Nations Security Council Sanctions: Iran*, AUSTRALIAN GOV'T DEPT. OF FOREIGN AFF. & TRADE, http://www.dfat.gov.au/un/unsc_sanctions/iran.html (last visited Jan. 20, 2011).

12. *News: Canada Passes Sanctions Under the Special Economics Measures Act*, FOREIGN AFF. & INT'L TRADE CAN., Oct. 19, 2010, http://www.international.gc.ca/sanctions/iran.aspx.

13. *Russia Refuses to Sell Port to Iranian Company*, PEOPLE'S DAILY ONLINE, Dec. 29, 2010, http://english.peopledaily.com.cn/90001/90777/90853/7245473.html.

14. Totten v. United States, 92 U.S. 105 (1875).

tion in 1953 in *United States v. Reynolds*.[15] Yet in the aftermath of the terrorist attacks of 9/11, the doctrine became a cornerstone in the Bush Administration's response to lawsuits filed against it for constitutional and human rights violations allegedly committed in United States' "war on terrorism."[16] The doctrine is essentially a common law privilege that requires U.S. courts, in exceptional circumstances, to exclude certain evidence or even dismiss a case in its entirety in order to prevent public disclosure of information that could severely harm U.S. national security.

With the inauguration of President Barack Obama in January 2009, the possibility existed that the government would step back from extensive use of the doctrine in U.S. courts, as a means of promoting greater transparency in government actions and allowing for a greater degree of accountability in U.S. courts. Indeed, the Obama Administration adopted new policies in September 2009 for invoking the privilege, which *inter alia* required certain evidentiary and harm requirements prior to assertion of the privilege, allowed government attorneys to seek outright dismissal of cases only in exceptional circumstances, and imposed multiple layers of review within the executive branch.

Nevertheless, during 2009-2010, the Obama Administration demonstrated a continued reliance on a broad application of the doctrine, such as in the case of *Mohamed v. Jeppesen Dataplan*, decided en banc by the Ninth Circuit Court of Appeals in September 2010. In *Jeppesen Dataplan*, the five plaintiffs were nationals of Egypt, Ethiopia, Iraq, Italy, and Yemen, who alleged that the U.S. government, acting in cooperation with other governments, brought about their apprehension and extraordinary rendition in secret to foreign countries (such as Morocco) where they were tortured and abused for purposes of interrogation as to alleged terrorist activities. The plaintiffs sued a U.S. corporation (Jeppeson Dataplan, Inc.) under the Alien Tort Statute[17] for allegedly providing flight planning and logistical support to the aircraft and crew involved in transporting the five plaintiffs to the locations where they were allegedly detained and abused.

Immediately after the suit was filed in 2008 (before the defendant even filed its answer to the complaint), the Bush Administration intervened and asked the court to dismiss the case under the state secrets doctrine. In support of that motion, the government filed two declarations–one classified, the other not–by the Director of the Central Intelligence Agency ("CIA"), General Michael Hayden, asserting that the allegations in the case would require disclosure of highly classified information, thereby harming U.S. national security.

The district court agreed that proceeding with the case would require disclosure of covert U.S. military or CIA operations in foreign countries against foreign nationals, and therefore dismissed the case based on the state secrets doctrine.[18] On appeal, however, a three-judge Ninth Circuit panel reversed, finding that the government had not established a sufficient basis for wholesale dismissal of the case under that doctrine.[19] Rather, the

15. United States v. Reynolds, 345 U.S. 1, 2, 7 (1953).

16. *See e.g.*, Laura K. Donohue, *The Shadow of State Secrets*, 159 U. PA. L. REV. 77, 87 (2010) (finding that "from January 2001 to January 2009, the privilege played a significant role in the executive branch's national security litigation strategy" and "the government has invoked the state secrets privilege in more than 100 cases.").

17. Alien's Action for Tort, 28 U.S.C. § 1350 (2006).

18. Mohamed v. Jeppesen Dataplan, Inc., 539 F. Supp. 2d 1128, 1132–33 (N.D. Cal. 2008), *rev'd*, 579 F.3d 943 (9th Cir. 2009), *aff'd en banc*, 614 F.3d 1070 (9th Cir. 2010).

19. Mohamed v. Jeppesen Dataplan, Inc., 579 F.3d 943, 960-62 (9th Cir. 2009), *aff'd en banc*, 614 F.3d 1070 (9th Cir. 2010).

court decided that the case should move forward until it was demonstrated that specific evidence that is truly a state secret is indispensable to establishing the plaintiffs' claims.

The Ninth Circuit then granted a rehearing en banc. Since the Obama Administration had established in September 2009 new policies for invoking the privilege, in order "to strengthen public confidence that the U.S. [g]overnment will invoke the privilege in court only when genuine and significant harm to national defense or foreign relations is at stake and only to the extent necessary to safeguard those interests,"[20] it was thought that the government might alter its approach to the case. Nevertheless, in both its written and oral pleadings to the Ninth Circuit, the government maintained that the doctrine was properly invoked in the case, even under the new policies.

In September 2010, the Ninth Circuit en banc issued a six-to-five decision agreeing with the government and therefore dismissing the case. The court approached the matter first by considering the *Totten* standard of whether the government had established that the entire subject matter of the case was a state secret; in other words, whether maintenance of the suit would inevitably lead to disclosure of confidential matters. The court declined to find that the *Totten* standard had been met, noting that the plaintiffs' allegations that "Jeppesen should be liable simply for what it 'should have known' about the alleged unlawful extraordinary rendition program while participating in it are not so obviously tied to proof of a secret agreement between Jeppesen and the government."[21] The court thus cast doubt over the use of the *Totten* approach outside very limited circumstances (for example, cases involving the existence of a spy contract or the location of nuclear weapons). Indeed, the Ninth Circuit en banc stated:

> Because the Totten bar is rarely applied and not clearly defined, because it is a judge-made doctrine with extremely hard consequences and because conducting a more detailed analysis will tend to improve the accuracy, transparency, and legitimacy of the proceedings, district courts presented with disputes about state secrets should ordinarily undertake a detailed Reynolds analysis before deciding whether dismissal on the pleadings is justified.[22]

At the same time, the court found that the government had met the *Reynolds* standard, which is focused not on the subject matter of the case but on the evidence necessary to prove or defend against the plaintiffs' allegations. The court confirmed that three steps must be satisfied to meet the *Reynolds* standard: (1) the evidentiary privilege must be formally invoked by the head of the executive branch department with control over the matter, after personal consideration by that officer; (2) the court must then independently determine whether the information is in fact privileged; and (3) if the claim of privilege is successful, the court must then consider how the case should proceed.[23]

In this case, the Ninth Circuit found the first step satisfied by the Hayden classified and unclassified declarations noted above.[24] As for the second step, the court conducted its

20. *See* Memorandum from the Attorney Gen. to the Heads of Exec. Dep'ts and Agencies on Policies and Procedures Governing Invocation of the State Secrets Privilege 1 (Sept. 23, 2009), *available at* http://www.justice.gov/opa/documents/state-secret-privileges.pdf.

21. Mohamed v. Jeppesen Dataplan, Inc., 614 F.3d 1070, at 1085 (9th Cir. 2010) (en banc).

22. *Id.* at 1084.

23. *Id.* at 1080.

24. *Id.* at 1085.

own assessment of the claim of privilege, found that in defending the claim, Jeppesen would be compelled to disclose various types of information (for example, whether it assisted the CIA with clandestine intelligence activities), and determined that "compelled or inadvertent disclosure of such information in the course of litigation would seriously harm legitimate national security interests."[25] Proceeding to the third step, the court held that dismissal of the case was required "because there is no feasible way to litigate Jeppesen's alleged liability without creating an unjustifiable risk of divulging state secrets."[26] In particular, this is true "because all seven of plaintiffs' claims, even if taken as true, describe Jeppesen as providing logistical support in a broad, complex process, certain aspects of which, the government has persuaded us, are absolutely protected by the state secrets privilege."[27]

The four dissenting judges asserted that the *Reynolds* framework requires the court to review specific privileged evidence that is indispensable in the case, not to throw out the case before the defendant has even responded to the complaint. According to the dissenters, "[m]aking assumptions about the contours of future litigation involves mere speculation, and doing so flies straight in the face of long standing principles of Rule 12 law by extending the inquiry to what might be divulged in future litigation."[28]

Whether U.S. courts remain receptive to such use of the state secrets doctrine will continue to be tested. For example, should the doctrine be available to preclude a case by a U.S. national alleging that the U.S. government is unlawfully targeting him for death abroad? In *Al-Aulaqi v. Obama*, a father maintained that the Obama Administration was targeting his son (a dual U.S.-Yemeni national named Anwar al-Aulaqi) in Yemen for death, due to the younger al-Aulaqi's association with Al Qaeda. The lawsuit sought an injunction from the court on grounds that the alleged U.S. government conduct violates both the U.S. Constitution and international law. According to a brief filed by the U.S. Department of Justice in September 2010, however, the state secrets doctrine bars "disclosure of the evidence necessary to determine plaintiff's standing and to decide whether plaintiff is entitled to any relief and whether the defendants were in compliance with the relief plaintiff seeks."[29] The district court dismissed the case on standing grounds in December 2010, without ruling on the government's state secrets defense.

III. Cuba: Travel, Property, and Rum

Congress attempted to ease numerous economic sanctions but did not do so by the end of the year. The Obama Administration continued migration talks in New York but denounced Cuba's "clenched fist" on human rights and called for the release of USAID contractor Alan Gross.[30] There were at least two federal court decisions of note, and one honorable mention, in the seemingly never-ending "rum wars." There were also a hand-

25. *Id.* at 1086.
26. *Id.* at 1087.
27. *Id.* at 1088.
28. *Id.* at 1096.
29. Mot. to Dismiss for Defendants at 6, Al-Aulaqi v. Obama, Civ. A. No. 10-cv-1469 (D.D.C. Sept. 25, 2010), *available at* http://www.lawfareblog.com/wp-content/uploads/2010/09/usgbrief.pdf.
30. Press Release, The White House, Office of the Press Sec'y, Statement by the President on the Human Rights Situation in Cuba (Mar. 24, 2010), *available at* http://www.whitehouse.gov/the-press-office/statement-president-human-rights-situation-cuba.

ful of enforcement actions for alleged violations of sanctions, and U.S. agriculture exports to Cuba were down during the first half of the year.[31]

In *Faculty Senate of Florida International University v. Winn*, professors protesting a state law that bans the use of state funds for programs involving countries deemed by the U.S. Department of State to be state sponsors of terrorism were handed a defeat. A federal district court had upheld the Florida law's restriction on the use of state funds, but found that federal law preempted the restriction on the use of private funds administered by the state (at state expense) and violated the federal foreign affairs power. The Eleventh Circuit reversed the lower court and upheld the entire Florida law,[32] distinguishing the U.S. Supreme Court decision in *Crosby v. National Foreign Trade Council*, which struck down a state statute that restricted state entities from transacting with companies that did business with Burma. The Eleventh Circuit found that unlike *Crosby*, the Florida statute did not "unilaterally select . . . a foreign country on which it has declared, in effect, some kind of economic war."[33] The Florida law does not ban travel, business, or investment in Cuba; rather, it is aimed at a traditional state interest: managing the use of education monies. The law's brush with "federal law and the foreign affairs of the United States is too indirect, minor, incidental, and peripheral to trigger the Supremacy Clause's—undoubted—overriding power."[34]

The other case, *Lamb v. ITT Corp.*, involves confiscated property claims, an issue that will arise again many times as relations between the United States and Cuba improve. *Lamb* involves certified claims held by ITT against the Cuban government for property and related interests that were confiscated during the early part of the revolution. ITT was a majority shareholder in the Cuban telephone company, CUTELCO. In 1998, the United States authorized ITT to enter into an agreement with a European telecommunications company that allowed the Europeans to pay ITT $28 million for the use of an underground telecommunication cable for which ITT had a claim against Cuba. Lamb and other heirs, successors in interest to that claim (their father was a minority shareholder in ITT), brought an equitable action in federal court to claim "their just share" of the proceeds.[35] The court denied ITT's motion to dismiss.

The federal district court stated that by accepting payment from a European telecommunication company in exchange for ITT's efforts to secure a license from the U.S. government, "ITT arguably usurped an opportunity properly belonging to all claimholders," and "ITT clearly has duties in trust for the non-claimant shareholders and creditors."[36] The heirs were entitled to an accounting and "[t]he spirit, if not the letter" of the law "would not be honored by the provision of more benefits to non-claimants than to claimants."[37]

On the sanctions enforcement front, there were numerous cases, including that of ABN AMRO Bank N.V. (now named the Royal Bank of Scotland N.V.), which, as part of a

31. Juan Tamayo, *Big Drop in U.S. Agricultural Sales to Cuba*, MIAMI HERALD, July 29, 2010, http://www.miamiherald.com/2010/07/29/1751278/big-drop-in-us-agricultural-sales.html.

32. Faculty Senate of Fla. Int'l Univ. v. Winn, 616 F.3d 1206 (11th Cir. 2010).

33. *Id.* at 1210.

34. *Id.* at 1208.

35. Lamb v. ITT Corp., No. 8:09CV95, 2010 WL 376858, at *1 (D. Neb. Jan. 26, 2010).

36. *Id.* at *7.

37. *Id.*

deferred prosecution agreement, agreed to forfeit $500 million for assisting sanctioned countries and entities in Iran, Libya, Sudan, and Cuba evade U.S. laws by facilitating transactions totaling hundreds of millions of U.S. dollars. Meanwhile the Treasury Department's Office of Foreign Assets Control ("OFAC") reported settlement of various cases involving alleged violations of the Cuban Assets Control Regulations ("CACR"). There have also been numerous reports in the media about the Obama Administration easing travel restrictions to Cuba by allowing more American citizens to travel to the island from more U.S. gateway cities, but no official action has yet occurred.[38]

Finally, there was at least one volley in the ongoing "rum wars" between Bacardi and Pernod Ricard. The French owner of Cuba's Havana Club rum accused Bacardi of violating the Lanham Act, but a federal court concluded that Bacardi's Havana Club rum label was neither false nor misleading because the rum has a Cuban heritage, is labeled truthfully (and prominently), and provides the geographic location of the Havana Club's manufacturer (Puerto Rico).[39]

IV. Export Controls and U.S. Strategic Initiative: The Indian Paradigm

This section examines the presidential utilization of export controls as a method of achieving prospective national security priorities, as well as publicly unarticulated longer-term strategic objectives being contemplated by the United States government. The primary method of analysis is through U.S. engagement, or through relaxation of bilateral or multilateral export control agreements, by and between the United States and a particular area or state of geopolitical concern.

The present scenario contemplates the rise of the Taliban and Al Qaeda insurgencies in Pakistan in general, and in the Administered Territories in particular, over the past two and a half years, coupled with the specter of Pakistan as a failed state and the potential takeover of Pakistani nuclear assets by terrorist forces. Further, this section contemplates the utilization of the U.S. export control regimes as a means of discovering underlying U.S. policy by examining the geopolitical and strategic areas where the President is exercising his foreign policy prerogatives through the reduction and/or eradication of export control restrictions. Finally, this section ascertains such policy objectives through the type and nature of the export controls' agreements entered into.

In this section, we posit the United States' perceptions towards India as a strategic counterbalance in the case of prospective nuclear crises, and we posit the need for future U.S. and allied operations in the immediate area.

Increasing concern over escalating hostilities in Pakistan is reflected in the United States' attempts to implement a greater strategic understanding with India through the relaxation of both the Export Administration Regulations ("EAR"),[40] which regulations derive from the Export Administration Act ("EAA") and which have been continued by

38. *See e.g.*, Lesley Clark & Juan Tamayo, *Elections Delay Cuba Travel Policy Expansion*, MIAMI HERALD, Sept. 17, 2010, http://www.miamiherald.com/2010/09/17/1828781/no-word-on-easing-travel.html.

39. Pernod Ricard USA, LLC v. Bacardi USA, Inc., 702 F. Supp. 2d 238, 253 (D. Del. 2010).

40. Export Administration Regulations as ensuing from the Export Administration Act and continuing by presidential fiat through the U.S. International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1701-07 (2011), and as administered by the Department of Commerce, Bureau of Industry and Security ("BIS").

presidential fiat through the U.S. International Emergency Economic Powers Act ("IEEPA"), and the United States Munitions List ("USML"), which categorizes technologies and goods governed by the International Traffic in Arms Regulations ("ITAR"), the authority of which is derived from the Arms Export Control Act ("AECA").[41] Such attempts find expression in the joint United States and India Validated End User ("VEU") Agreement in 2009[42] and other U.S. initiatives expressed in the export restriction reduction agreements entered into with India as of November 2010.

In 2009, the U.S. Bureau of Industry and Security ("BIS") promulgated final rules expanding approved end-user entities and eligible products controlled under the Export Control Classification Numbers ("ECCNs") in part of a failed attempt to achieve greater strategic cooperation with India.[43]

One reason for the failure concerned heavy debate in India concerning the verification procedures of the VEU agreement and End-Use Monitoring ("EUM") agreements, requiring on-site verification, which many Indians felt was a direct encroachment upon Indian sovereignty.[44]

On November 8, 2010, President Obama visited the Indian Prime Minister, Dr. Manmohan Singh. They issued a joint statement hailing their agreement to "strengthen the global export control framework and further transform bilateral export control regulations and policies to realize the full potential of the strategic partnership between the two countries."[45] This expanded strategic relationship is built upon the relaxation of U.S. export controls on four separate fronts or pillars.[46]

First, the United States supports India's "full members[hip] in the four multilateral export control regimes–the Nuclear Suppliers Group, the Missile Technology Control Regime, the Australia Group (for chemical and biological controls), and the Wassenaar Arrangement (for dual use and conventional arms controls)–in a phased manner."[47] Second, the United States will remove India's defense and space-related entities from the U.S. Department of Commerce's "entity list."[48]

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41. For laws and regulations relating to control of export and import of defense articles and defense services covered by the United States Munitions List, administered by the Department of State, the Bureau of Political-Military Affairs, and the Directorate of Defense Trade Controls (DDTC), *see* Arms Export Control Act (AECA), 22 U.S.C. §§ 2778-80 (2011), and the International Traffic in Arms Regulations (ITAR), 22 C.F.R. §§ 120-30 (2011).

42. Authorization Validated End-User (VEU), 74 Fed. Reg. 31,620 (July 2, 2009) (to be codified at 15 C.F.R. pt. 748).

43. *See* John W. Boscariol et al., *Business Regulation: Export Controls and Economic Sanctions*, 44 INT'L LAW. 25, 28 n.23 (2010).

44. Ajai Shukla, *US High-Tech Arms to India Stumble on Safeguards*, Rediff.com, May 25, 2010, http://business.rediff.com/report/2010/may/25/us-high-tech-arms-to-india-stumble-on-safeguards.htm.

45. *See* Press Release, The White House, Office of the Press Sec'y, Joint Statement by President Obama and Prime Minister Singh of India (Nov. 8, 2010), *available at* http://www.whitehouse.gov/the-press-office/2010/11/08/joint-statement-president-obama-and-prime-minister-singh-india.

46. *See* Press Release, The White House, Office of the Press Sec'y, Fact Sheet: U.S.-India Partnership on Export Controls and Non-Proliferation (Nov. 8, 2010), *available at* http://www.america.gov/st/texttrans-english/2010/November/20101108143935su8.744013e-02.htmlTop of Form; *see also* Catherine Robinson, *President Obama Announces Reform of U.S. Export Controls with India*, NAT'L ASS'N OF MFRS. UPDATE, Nov. 8, 2010, http://www.ndia.org/Resources/ExportImportComplianceResources/DailyBugle/Documents/November%202010/Nov%208.pdf.

47. *See* Press Release, The White House, *supra* note 46.

48. *Id.*

As noted by the White House, inclusion in the entity list generally triggers export license requirements for items that would otherwise not require such licensing. Third is what the White House terms "Export Licensing Policy Realignment," in which the United States undertakes the realignment of its own export control regulations to reflect India's status as a "strategic partner." Furthermore, the acquisition of the status of "strategic partner" translates into the effective treatment of India similarly to other close strategic allies and partners. Further, "export realignment" includes extracting India from the list of countries of concern that are prohibited from receiving certain sensitive dual-use technologies.[49] This shift is indicative of the strategic importance the United States places on an Indian alliance or "understanding," for reasons of strategic and tactical access, in reference to future conflicts arising in the area. As a *quid pro quo*, India is undertaking a harmonization of its National Control List with the multilateral regimes and incorporating re-exportation controls on U.S. origin items, as well as addressing potential transshipment of such items. Fourth, India and the United States are jointly undertaking cooperation in the area of export controls in both "strengthen[ing] and expand[ing] dialogue on export control issue . . . such as the U.S.-India High Technology Cooperation Group," and by increasing harmonization of both U.S. and Indian export control regimes, expanding greater dialogue, promoting future cooperation, and facilitating increased U.S.-Indian trade.[50]

This approach typifies the process of developing a U.S. strategic initiative through the relaxation of export controls to a specific country or region, which portends a first step toward increasing strategic and military cooperation. As a result, export controls and resulting regional agreements relaxing such controls, coupled with knowledge of contemporaneous surrounding crises, may be a good indicator of U.S. objectives in a particular region. Export control initiatives, accomplished through the executive, are a good, albeit subtle, foreign policy tool to analyze when the United States and its allies are confronted with existential threats. It remains to be seen whether export control initiatives bear fruit and assist in containing potentially volatile conflicts that may have unforetold global repercussions.

49. *Id.*
50. *Id.*